

**Report of the
Appeals Committee
to the
73rd Convention**

CWA

**Communications Workers of America
July 11-13, 2011
Las Vegas, Nevada**

INTRODUCTION

The Appeals Committee convened July 7 through July 10, 2011, at the Las Vegas Hilton, in Las Vegas, Nevada, for the purpose of receiving and disposing of appeals in accordance with the CWA Constitution and the Internal Appeals Procedures of the Union, as established by prior Conventions and the Executive Board.

The Committee was available to meet with interested parties on July 9 through July 10 between the hours of 2:00 pm through 6:00 pm. Outside of these hours, the Committee was available by appointment.

I would like to thank the Committee members – Mike Smith, President, CWA Local 4103, Chair; Becky Morris, Executive Vice President, CWA Local 3808; Erin Hall, President, CWA Local 6316; Lisa Hicks, Executive Vice President, CWA Local 7500 and Evelyn Evans, President, IUE-CWA Local 81381 for their hard work and the time they devoted to these appeals. Also, the Committee thanks Gail Evans, Administrative Director, CWA District 2-13, for her support and assistance.

APPEAL 1

On July 7th, 2011, Mike Truslow, a Chief Steward on behalf of the membership of CWA Local 82173, appealed the Executive Board's decision not to arbitrate the termination of Stacey Eustler.

Stacey Eustler was a 9 year employee of Personna-American Safety Razor. On October 13, 2010, Mr. Eustler was terminated for unsatisfactory attendance.

The file indicates the collective bargaining agreement includes a clear and concise attendance policy. In brief, the attendance policy states progressive steps of discipline will be used to correct poor attendance based on a point system for unexcused absences. Under the policy, two attendance points are charged for each unexcused absence, and one attendance point for an absence of four hours or less. Should an employee accumulate twelve attendance points in any 26 consecutive week period the employee is placed on Final Warning. The Final Warning serves as notice to the employee that they have one last chance to improve attendance. Should the employee receive more than four attendance points in the next 26 weeks, after receiving a Final Warning, they will be discharged.

The record in this matter shows that Mr. Eustler had attendance issues including a total of eight previous Final Warnings dating back to 2003. On May 20, 2010, he was issued a twelfth attendance point, and was placed on Final Written Warning. Due to absences on May 21, May 23, June 3, September 14, September 23 and September 24, 2010, Mr. Eustler accumulated a total of ten additional absence points. That places him at twice the number of attendance points necessary for termination. While Mr. Eustler disputes some of his absences, the record shows that even with subtracting the points for the disputed absences, Mr. Eustler was still at Final Warning with at least five additional attendance points. This would still subject him to termination under the attendance policy.

In light of the evidence in the record and the negotiated attendance policy using progressive discipline, it is most unlikely that the Union could prevail in arbitration.

Accordingly, the Appeals Committee is in agreement with the Executive Board to not arbitrate Mr. Eustler's termination, hence the Appeals Committee recommends that the appeal of CWA Local 82173 be denied.

APPEAL 2

On December 16, 2010, Ted Levee, former officer of CWA Local 6215 appealed the decision of the Executive Board to uphold the decisions of the Local Trial Court and membership.

Ted Levee was suspended on December 14, 2010 as a Union member and removed from the position of Treasurer of CWA Local 6215, after being found guilty of charges filed against him by CWA Local 6215 member Pam Gentry.

The original charges alleged that Mr. Levee violated Article XIX, Section 1(c) and (i) of the CWA Constitution. Article XIX, Section 1(c) and (i) reads as follows:

- (c) Willfully violating the Constitution of the Union, Local Bylaws or Rules;
- (i) For such other offenses, equally serious, which tend to bring the Union or Local thereof into disrepute.

The charges against Mr. Levee are as follows:

- 1) He trespassed into another Local Officer's office, logged on and placed spyware onto the Local's computer, all for personal reasons;
- 2) He engaged in incidents of verbal attacks and abuse toward fellow officers, members and employees of CWA Local 6215; and
- 3) He used the Local's equipment (security system and tape) for his own personal use as opposed to official/local business.

The record clearly shows that Mr. Levee did enter into another officer's office, did engage in verbal attacks and abuse toward fellow officers and did, in fact, create a DVD using the Local's security tape without permission or authorization of the Local Executive Board. In addition, the record indicates that spyware was found on the Local's computer and that Ted Levee had threatened to place spyware on the Local's computer.

Since there is sufficient evidence to substantiate the charge, the Appeals Committee recommends that the decision of the Executive Board be upheld and the appeal of Ted Levee be denied.

APPEAL 3

On May 10, 2011, Louis Scinaldi, President, on behalf of Gerard Huskey Jr., a member of Local 2202, appealed the Executive Board's decision not to arbitrate the grievance filed against the employer due to their use of contractors to perform bargaining unit work of the Engineering Assistants.

Mr. Huskey is employed with Verizon as an Engineering Assistant. His grievance was based on the employer allegedly violating the Collective Bargaining Agreement (CBA), Memorandum of Agreement (MOA) and Letters of Understanding (LOU) regarding the contracting out of bargaining unit work. Mr. Huskey alleges that contractors were performing Engineering Assistant bargaining unit work.

In cases alleging contract violations, the Union would have to convince an arbitrator that the company had violated the language cited in the grievance appeal.

The collective bargaining language on contracting out work only prohibits contracting where it would result in the lay off or part-timing of employees. The company has a decades long history of contracting out Engineering work. In this case, no employees were laid off or put on part time status. The MOA does not provide Engineering Assistants exclusivity to any bargaining unit work.

Regarding the LOU's cited in the appeal;

- ISP/EISP – Limitations on Contracting Out – This LOU states it applies to “Category 1 Employees” only. The Engineering Assistant is a “Category A” Employee.

- Contract Labor – This LOU confirms the company's objective to “consider carefully the interest of customers and the concerns of employees” before contracting out bargaining unit work.

The grievance file provides no proof the company did not “consider” employees interests.

· Contracting Initiatives – The LOU establishes a joint committee for the purpose of finding ways by which levels of contracting can be reduced. It does not prohibit the company from contracting out bargaining unit work which has been contracted out in the previous three years.

After careful review of the CBA and associated MOA and LOU’s regarding contract labor, the Committee finds the Local did not show where the employer violated any of those agreements.

The Appeals Committee agrees with the decision of the Executive Board and therefore, recommends that the decision of the Executive Board be upheld and the appeal of Louis Scinaldi, President, on behalf of Gerard Huskey Jr. be denied.

APPEAL 4

Bob Barbarelli and Kenny Evangelista have appealed the Executive Board's decision related to their membership status. Mr. Barbarelli and Mr. Evangelista had previously been members of CWA Local 1101. Both allowed their membership in the Local to lapse after their retirements. Mr. Barbarelli and Mr. Evangelista admit that they have not been members of CWA for over nine years.

Both Barbarelli and Evangelista submitted membership applications to Local 1101 in January of 2011. By letter dated March 1, 2011, the Local Secretary advised that the Local 1101 Membership Committee had recommended denying membership and that the Local Executive Board had agreed with that recommendation. Barbarelli and Evangelista appealed that decision to Vice President Shelton who declined to disturb the action of the Local. President Cohen and the Executive Board subsequently concurred with that decision. President Cohen's decision and the Executive Board's decision in this case reviewed the constitutional and convention history concerning retirees seeking to reestablish active membership.

Past actions by the Convention and the Executive Board have established that retired members who have allowed their membership to lapse may rejoin the Local, but must, like any other individual, apply for membership. The CWA Constitution under Article V, Membership, Section 2, Applications, paragraph (f) clearly reserves the right to "accept or reject" application for Local membership to the Local. As noted above, Vice President Shelton, President Cohen and the Executive Board declined to disturb the decision of the Local to reject the membership applications.

The decision of whether to accept an individual into membership has always been reserved to the Local and the Local should rightfully be allowed to determine whether to admit an individual into membership. Higher levels of the Union are and should be extremely hesitant to disturb that decision. The Appeals Committee agrees that the Vice

President, President and Executive Board took the correct action in declining to do so in this case.

Therefore, after a thorough review of the file, the Appeals Committee recommends that the decision of the Executive Board be upheld and the appeal of non-members Bob Barbarelli and Kenny Evangelista be denied. The Appeals Committee also recommends that the Executive Board consider amending the Internal Appeals Procedures to provide that once a Local rejects a membership application, there are no further appeal rights.

APPEAL 5

Jerry Butler, President of CWA Local 6009, has appealed the decision of the Executive Board to uphold the CWA District 6 Arbitration Review Panel's determination not to arbitrate the termination grievance of Ms. Sarah Childs.

Ms. Childs was a Senior Consultant with AT&T/SBC and had approximately 7½ years of service. She was terminated on May 10, 2010, for misconduct – specifically, failure to report to work.

The record indicates Ms. Childs was on a disability absence. On February 18, 2010, Ms. Childs was notified by the Integrated Disability Service Center that her claim for short term disability benefits had been denied. At that time Ms. Childs was also notified of her right to appeal that decision. On March 19, 2010, Ms. Childs was notified that since her disability benefits had been denied and she would exhaust her FMLA time, she must report to work on March 26, 2010. That letter also notified Ms. Childs that failure to report to work may result in suspension pending further review. Ms. Childs did not report to work. On March 29, 2010, Ms. Childs was notified she had been placed on suspension due to misconduct – specifically, insubordination for failure to follow a management directive to report to work as well as job abandonment. On April 26, 2010, Ms. Childs was notified her “Day-In-Court” meeting with the General Manager had been scheduled for April 29, 2010 and failure to be available would result in termination. Ms. Childs was present for the “Day-In-Court” meeting and the meeting was recessed for further review until May 7, 2010. Ms. Childs was subsequently terminated in May 2010 for misconduct – failure to follow a management directive to report to work as well as job abandonment.

Based on the records provided, the Appeals Committee recommends the decision of the Executive Board be upheld and the appeal of Jerry Butler on behalf of Sarah Childs be denied.

APPEAL 6

On April 19, 2011, Earnest Tilley, President, CWA Local 6151, appealed the decision of Independent Referee Willie L. Baker, Jr. regarding a jurisdictional dispute between CWA Local 6151 and CWA Local 6201.

Article XIII, Section 4(a) 2, of the CWA Constitution provides that:

“The decision of the referee may be appealed to the CWA Convention within thirty days of receipt of the referee’s decision. Such appeals shall be presented to the Convention by the Convention Appeals Committee. The only responsibility of the Appeals Committee shall be to convey the decision and opinion to the Convention without making any recommendation.”

The decision was copied and provided to all delegates on the tables today. Independent Referee Willie L. Baker, Jr.’s decision is now before you.